



STATE OF INDIANA

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March 16, 2015

Cecil A. Hall
Indiana State Prison
1 Park Row
Michigan, IN 46360

Re: Formal Complaint 15-FC-34; Alleged Violation of the Access to Public Records Act by the St. Joseph County Clerk

Dear Mr. Hall,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Terri J. Rethlake, Clerk of St. Joseph County, has issued a response which is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 5, 2015.

BACKGROUND

Your complaint dated January 15, 2014 alleges the St. Joseph County Clerk violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On December 29, 2014, you submitted to the Clerk a public records request seeking a copy of the sentencing transcript and Guilty Plea Agreement for specified cause numbers. In your complaint you assert the Clerk did not respond to your request, which you believe was received.

The Clerk responded to your complaint on February 18, 2015. The Clerk contends the request dated December 29, 2015 was not in your files. Additionally, the judges in charge of those cases do not have a copy of those requests. However, the Clerk also cites a previous letter to you by Judge Hurley of St. Joseph Superior Court, which stated since the Court does not create, retain or maintain transcripts of sentencing hearings, they are not public records under the APRA.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The St. Joseph County Clerk is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Clerk’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

APRA does not require a public agency to create a new record in order to satisfy a public records request. St. Joseph had previously informed you the Court does not maintain the transcripts you request. Transcripts are created by the Court Recorder at the request of the parties. Unless there is an appeal, no transcript is usually created.

Furthermore, this Office is familiar with the challenges faced by inmates regarding the prison mailing system. While it is unfortunate your records request was not received by the Clerk, it is likely this was a casualty of the prison mail system.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the St. Joseph County Clerk has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized, flowing script.

Luke H. Britt
Public Access Counselor

Cc: Ms. Terri J. Rethlake